

Document #4890

4/23/87

ADOPTED

M E M O R A N D U M

April 23, 1987

TO: BOSTON REDEVELOPMENT AUTHORITY AND
STEPHEN COYLE, DIRECTOR

FROM: SUSAN ALLEN, ASSISTANT DIRECTOR FOR URBAN DESIGN AND
DEVELOPMENT
PAUL L. McCANN, EXECUTIVE ASSISTANT TO THE DIRECTOR
WILLIAM D. WHITNEY, DEPUTY DIRECTOR FOR URBAN DESIGN
AND DEVELOPMENT

SUBJECT: ACQUISITION OF THE U.S CUSTOM HOUSE

As you are aware, the Federal Government has declared the U.S. Custom House surplus property and has offered the property to the City of Boston. For the past several months, staff members of the Authority and the City have been meeting with GSA officials concerning the proposed acquisition of the Custom House. The Mayor wishes the Authority to act as agent for the City of Boston to assist in the acquisition of the U.S. Custom House to ensure that the property is preserved as an historic monument and that any redevelopment and restoration of the building be carried out in such a manner that the building's design and historic nature are preserved.

The GSA's initial offering price was \$20 million. The current terms negotiated, acceptable in principle to the GSA, call for an installment sale with a purchase price of \$11 million. The complete proposed terms of acquisition are as follows:

Purchase Price: \$11,000,000.

Downpayment: 10% of purchase price, or \$1,100,000.
\$110,000 earnest money deposit payable upon
tender of an Offer to Purchase, \$990,000
balance due to closing.

Term of Installment
Sale Agreement: 10 years, interest only first 5 years.
Principal fully repaid over remaining
5 years.

Interest Rate: 10 year Treasury Rate at the time of
Acceptance of Offer to Purchase + 1.5%.

Prepayment penalties: None.

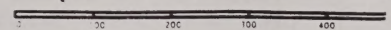
The BRA will hold a development competition to determine which developer can best restore and preserve the Custom House in accordance with publicly-determined preservation criteria. The developer will then enter into a lease agreement with the BRA which will provide for the complete reimbursement of expenses incurred by the BRA in purchasing the property. The developer

will also be responsible for the installment sale payments as detailed above. The interest-only payments in the first five years will allow the developer to complete restoration and renovation of the building and will allow the project to stabilize before the repayment of principal begins. Once the mortgage obligations to the GSA have been discharged, after a ten year term as provided, the Authority will convey the underlying interest in the property to the City of Boston.

The rehabilitation standards and criteria will be determined by the Boston Landmarks Commission. The building will be restored and maintained in accordance with these guidelines at the expense of the leasee. The original Custom House will be maintained as a public space with cultural or other non-commercial uses open to the general public. The observation deck shall be made available for limited public access. The tower shall be office, hotel or residential use.

As you recall, the Authority amended the 1964 Urban Renewal Plan (R-77) in 1986 to allow it to purchase the Custom House in the event of its sale by the Federal Government.

We therefore recommend that the Authority authorize the acquisition of the U.S. Custom House from the Federal Government under the terms described above. An appropriate vote follows.



BOSTON REDEVELOPMENT AUTHORITY

Dec. #4890
4/23/87

RESOLUTION OF THE
BOSTON REDEVELOPMENT AUTHORITY

Re: Transfer of Federal Surplus Land

WHEREAS, certain real property owned by the United States, located in the County of Suffolk, Commonwealth of Massachusetts, has been declared surplus and at the discretion of the Administrator of General Services, may be conveyed to a State, political subdivision, instrumentalities thereof, or a municipality, under the provisions of Section 203(k)(3) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 484 (k)(3)), and rules and regulations promulgated thereto, more particularly described as follows:

Descriptions of the parcels and rights comprising the property offered for sale are contained in the following deeds:

1. Deed dated September 13, 1837 from Proprietors of Boston Pier or Long Wharf to the United States, recorded in Suffolk Deeds Book 424, Page 97.
2. Deed dated August 29, 1837 from Central Wharf and Wet Dock Corporation to the United States, recorded in Suffolk Deeds Book 424, Page 101.
3. Deed of both the above grantors to the City of Boston, recorded at Suffolk Deeds Book 424, Page 99, giving the United States the right to construct sidewalks (with coal holes thereunder) 10 feet by 3 feet on the easterly side and northerly end of the Customs House.
4. Deed of the City of Boston, dated June 7, 1839, to the United States, recorded in Suffolk Deeds Book 445, Page 161.
5. Deed of the Proprietors of Long Wharf and Central Wharf to the United States of America dated June 7, 1839, and recorded in Suffolk Deeds Book 445, Page 162, releasing restrictions in their above said deed to the City of Boston recorded at Book 424, Page 99.
6. Deed of the City of Boston to the United States of America, dated July 11, 1863, and recorded in Suffolk Deeds Book 831, Page 25.
7. Deed of the Proprietors of Boston Pier on the Long Wharf and Central Wharf and Wet Dock Corporation, dated July 11, 1863, and recorded with Suffolk Deeds Book 831, Page 26, releasing restriction in their above said deed recorded at Book 424, Page 99.

WHEREAS, the Boston Redevelopment Authority, acting as agent for the City of Boston, desires to acquire this property so as to assure that the existing historic, architectural and structural integrity will be preserved; and

WHEREAS, the Urban Renewal Plan for the Downtown Waterfront-Faneuil Hall Urban Renewal Project Area, Project No. R-77 (the "Plan"), was adopted by the Boston Redevelopment Authority on April 16, 1964 and approved by the City Council on June 8, 1964; and

WHEREAS, the Plan as amended provides in Chapter 4, Section 403, ...the property...owned by the United States government (Block 206-1) and used as a Federal office building... may be acquired by the Boston Redevelopment Authority and the use shall be office, hotel, or residential in the tower with public access to the observation deck. In the base of the tower the use shall be cultural or other general public use with designated space set aside for access to the tower uses. Controls to be established for the property shall be consistent with the requirements and controls imposed upon similar property by the provisions of the Urban Renewal Plan;

NOW, THEREFORE, BE IT RESOLVED, that the Boston Redevelopment Authority shall make application to the Administrator of General Services for and secure transfer to it of the above-described property for said use and subject to such exemptions, reservations, terms, covenants, agreements, conditions and restrictions as the Secretary of the Interior, and the Administrator of General Services, or their authorized representatives, may require in connection with the disposal of said property under said Act and rules and regulations issued pursuant thereto; and

BE IT FURTHER RESOLVED that the Boston Redevelopment Authority, has the legal authority, and that Stephen Coyle, Director of the Boston Redevelopment Authority, be and is hereby authorized, for or on behalf of the Boston Redevelopment Authority, to do and perform any and all acts and things which may be necessary to carry out the foregoing resolution, including, but not limited to, the execution of an Offer to Purchase substantially in the form appended hereto, the preparing, making, and filing of the execution, acceptance, delivery, and recordation of agreements, deeds and other instruments pertaining to the transfer of said property, for survey, title searches, recordation of instruments, or other costs identified with the Federal Surplus property acquisition; and

BE IT FURTHER RESOLVED, that the Boston Redevelopment Authority authorizes the payment of \$110,000 as an earnest money deposit and such other sums as shall be payable from time to time in accordance with terms and conditions of the purchase of the above-described property.

OFFER TO PURCHASE

U.S. Custom House
Boston, Massachusetts
1-G-MA-779

The Boston Redevelopment Authority, Boston, Massachusetts, hereinafter called the Purchaser, hereby offers to buy from the United States of America, hereinafter called the Seller, the property described in the attached Schedule A for the sum of Eleven Million Dollars (\$11,000,000). A certified check in the amount of One Hundred and Ten Thousand Dollars (\$110,000), made payable to the General Services Administration, is herewith deposited as earnest money.

The balance of the purchase price shall be due and payable as follows:

- (a) \$990,000 payable in cash on closing of the sale;
- (b) \$9,900,000 of principal and accrued interest on the unpaid balance, payable over a period of 10 years on the following basis:
 - (1) Quarterly payments of interest only on the unpaid balance for years one through five.
 - (2) Self-amortizing quarterly payments of principal and interest for years six through ten.

Interest on the unpaid balance shall be computed based on the yield of ten (10) year U.S. Treasury maturities as reported by the Federal Reserve Board in "Federal Reserve Statistical Release H.15" plus 1 1/2% rounded to the nearest one-eighth percent (1/8%) as of the date of acceptance of the Offer.

This offer is made subject to the following, copies of which are attached hereto and made a part hereof:

- 1. Provisions of GSA Form 2041, General Terms Applicable to Negotiated Sales, as amended;
- 2. Provisions of a Non-Discrimination Covenant (copy attached);
- 3. Excess Profits Clause (copy attached);
- 4. FAA Restrictions (copy attached);
- 5. A statement by the Purchaser of the legal authority to acquire and the availability of funds to pay for the property;
- 6. Evidence of the Authority of the person(s) signing the

offer to act on behalf of the Purchaser.

If this offer is accepted, the Purchaser proposes to use the property for the following purposes:

The original Custom House will be maintained as a public space with cultural of other non-commercial activities and the tower portion will be used for office, residential or hotel activities.

Submitted on this _____ day of _____

By: _____

Title: _____

Signature and Authority Certified By: _____

Title: _____

SCHEDULE A

U.S. Custom House
Boston, Massachusetts
1-G-MA-779

Property Description

The property included in this sale agreement is the U.S. Custom House, Boston, Massachusetts. It is located on an irregularly-shaped parcel of land containing approximately 17,000+ square feet in McKinley Square in the City of Boston's financial district. The parcel has approximately 75' of frontage along State Street to the north and along McKinley Square to the south. It fronts for about 140' along India Street to the west and again along McKinley Square to the east. The site is level with sidewalks surrounding the entire structure at street level.

Descriptions of the parcels and rights comprising the property included in the sale are contained in the following deeds:

1. Deed dated September 13, 1837 from Proprietors of Boston Pier or Long Wharf to the United States, recorded in Suffolk Deeds Book 424, Page 97.
2. Deed dated August 29, 1837 from Central Wharf and Wet Dock Corporation to the United States, recorded in Suffolk Deeds Book 424, Page 101.
3. Deed of both the above grantors to the City of Boston, recorded at Suffolk Deeds Book 424, Page 99, giving the United States the right to construct sidewalks (with coal holes thereunder) on the easterly side and northerly end of the Custom House extending into the street not exceeding 10' from the walls of the Main Building and 3' easterly of the easterly portico thereof.
4. Deed of the City of Boston, dated June 7, 1839, to the United States, recorded in Suffolk Deeds Book 445, Page 161.
5. Deed of the Proprietors of Long Wharf and Central Wharf to the United States of America dated June 7, 1839, and recorded in Suffolk Deeds Book 445, Page 162, releasing restrictions in their above said deed to the City of Boston recorded at Book 424, Page 99.
6. Deed of the City of Boston to the United States of America, dated July 11, 1863, and recorded in Suffolk Deeds Book 831, Page 25.
7. Deed of the Proprietors of Boston Pier or the Long Wharf and Central Wharf and Wet Dock Corporation, dated July 11, 1863, and recorded with Suffolk Deeds Book 831, Page 26, releasing restriction in their above said deed recorded at Book 424, Page 99.

Conveyance of the property will be subject to the following:

- a. An accurate survey thereof and any statement of facts disclosed by a physical inspection thereof.
- b. Easements, restrictions, encumbrances, and covenants of record.
- c. Preparation of an Historic Structures Report, if one is required, shall be the responsibility of the City of Boston, its successors or assigns.
- d. The U.S. Custom House is included on the National Register of Historic Places as a major component of the Custom House District. Accordingly, the deed conveying the property will include the following covenants:
 1. The Grantee agrees that the existing exterior architectural and structural integrity of the Custom House, Eight McKinley Square, Boston, Massachusetts, will be preserved.
 2. The Grantee agrees that any actions affecting the exterior of the entire Custom House and the interior of the first four floors and rotunda (original building 1837-1847) and clock will be accomplished in such a manner so as to be authentic historically and architecturally and that all plans or specifications for any alterations, improvements, or restoration of the entire exterior or interior areas set forth above must be presented in advance and approved by the Massachusetts Historic Commission or its delegated local representative.
 3. The Grantee agrees that any rehabilitation work on the Custom House will be accomplished in accordance with the Secretary of the Interior's Standards for Rehabilitating Historic Buildings and the Boston Landmark Commission's Specific Standards and Criteria for the U.S. Custom House.
 4. The Grantee agrees that the above historic preservation covenants will run with the land.

GENERAL TERMS APPLICABLE TO NEGOTIATED SALES (Surplus Real Property)

1. CONDITION OF PROPERTY.

The property is offered "As Is" and "Where Is" without representation, warranty, or guaranty as to quantity, quality, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose for which intended, and no claim for any allowance or deduction upon such grounds will be considered.

2. EARNEST MONEY DEPOSIT.

The offer must be accompanied by an earnest money deposit in such an amount and in such form as may be required by the Government. Upon acceptance of the offer, the deposit shall be applied toward payment of the offeror's obligation to the Government. In the event the offer is rejected, the deposit will be returned, without interest, as promptly as possible after rejection of the offer.

3. CONTINUING OFFER.

The offer shall be deemed to be a firm and continuing offer from the date of receipt until accepted or rejected by the Government: provided, however, that after 90 days have elapsed from the date of receipt, the offeror not having received notice of rejection may consider his offer rejected, and if the Government desires to accept the offer after such 90-day period, the consent of the offeror thereto shall be obtained.

4. NOTICE OF ACCEPTANCE OR REJECTION.

Notice by the Government of acceptance or rejection of the offer shall be deemed to have been sufficiently given when telegraphed or mailed to the offeror or his duly authorized representative at the address indicated in the offer.

5. CONTRACT.

These General Terms Applicable to Negotiated Sales, the offer, and the acceptance thereof, shall constitute an agreement between the offeror and the Government. Such agreement shall constitute the whole contract to be succeeded only by the formal instruments of transfer, unless modified in writing and signed by both parties. No oral statements or representations made by, or for, or on behalf of either party shall be a part of such contract. Nor shall the contract, or any interest therein, be transferred or assigned by the offeror without consent of the Government, and any assignment transaction without such consent shall be void.

6. RESCISSION.

~~a. The contract made by the acceptance of the offer by the Government may be transmitted to the Attorney General of the United States for his advice as to whether the sale would tend to create or maintain a situation inconsistent with the antitrust laws. The acceptance of the offer by the Government may be rescinded by the Government, in case unfavorable advice is received from the Attorney General.~~

b. An explanatory statement of the circumstances of the proposed disposal will be submitted to the appropriate committees of the Congress because of its negotiated character and the offer probably will not be accepted by the Government until after the proposed disposal has been considered by such committees. However, in any event, the Government may rescind its acceptance at any time during the 90-day period following such acceptance, if it is reasonably determined by the Government that such action is justified in the light of the circumstances then prevailing.

c. Any rescission, pursuant to a or b, above, will be without liability on the part of the Government other than to return the earnest money deposit without interest.

7. REVOCATION OF OFFER AND DEFAULT.

In the event of revocation of the offer prior to acceptance, or in the event of any default by the offeror in the performance of the contract created by such acceptance, the deposit, together with any payments subsequently made on account may be forfeited at the option of the Government, in which event the offeror shall be relieved from further liability, or without forfeiting the said deposit and payments, the Government may avail itself of any legal or equitable rights which it may have under the offer or contract.

8. OTHER TERMS APPLICABLE TO A SALE.

a. As of the date of assumption of possession of the property, or the date of conveyance, whichever occurs first, the offeror shall assume responsibility for care and handling and all risks of loss or damage to the property and have all obligations and liabilities of ownership.

b. Any title evidence which may be desired by the offeror will be procured by him at his sole cost and expense. The Government will, however, cooperate with the offeror or his authorized agent in this connection, and will permit examination and inspection of such deeds, abstracts, affidavits of title, judgments in condemnation proceedings, or other documents relating to the title of the premises the property involved, as it may have available. It is understood that the Government will not be obligated to pay for any expense incurred in connection with title matters or survey of the property.

c. Upon assumption of possession of the property, or conveyance of the property, whichever occurs first, the offeror shall assume responsibility for all general and special real and personal property taxes which may have been or may be assessed on the property, and sums paid, or due to be paid, by the Government in lieu of taxes pursuant to statutory authority shall be prorated.

d. In the event an offer to purchase for cash is accepted and possession of the property is assumed by the offeror prior to the date of conveyance, the offeror shall procure and maintain insurance at his expense, effective for the period from the date of assumption of possession to date of conveyance, for the benefit of the Government in such kinds and amounts as may be required by the Government, with companies acceptable to the Government.

~~e. Conveyance of the property will be accomplished by a quitclaim deed and where appropriate a bill of sale, in conformity with local law and practice.~~

f. In the event the offer to purchase is made on credit terms, financial data, references and such other information as may be requested by the Government, shall be promptly furnished by the offeror and the following conditions shall be applicable.

(1) The Government's acceptance of the offer to purchase on credit terms may be rescinded by the Government, in the event of an adverse finding by the Government as to the offeror's financial responsibility, without liability on the part of the Government other than to return the earnest money deposit without interest.

(2) The offeror shall procure and maintain insurance at his expense during the term credit is extended effective as of the date of assumption of possession of the property or the date of conveyance, whichever occurs first, for the benefit of the Gov-

ernment in such kinds and amounts as may be required by the Government.

(3) Contemporaneously with the delivery to the offeror of documents conveying the property purchased, he shall execute and deliver to the Government:

(a) A bond or note, in form and substance satisfactory to the Government, evidencing his obligation for payment of the balance of the purchase price; and

(b) A purchase money mortgage, vendor's lien and mortgage, or deed of trust, in conformity with the practice of the State in which the property is located; the document in any case, however, to be in form and substance satisfactory to the Government, and in any event to include:

i. A restriction against sale, lease (unless the property was offered without leasing restrictions), or other disposition of the mortgaged property or any part thereof without prior written consent of the Government;

ii. A requirement for provisions of insurance coverage satisfactory to the Government as to types of risks, amounts, and insurers;

iii. A provision that the principal obligation may be prepaid in full; or in part, on any installment due date, without penalty;

iv. A provision that partial payments made in advance of the regular schedule of payments shall be applied against the principal obligation in inverse order of maturity;

v. Agreement on the part of the mortgagor to allowance of reasonable attorneys' fees and costs to the Government in the event of foreclosure, and to a deficiency judgment (where not prohibited by State law) after foreclosure sale or exercise of power of sale in the mortgage; and

vi. A requirement to provide financial data dur-

ing the period of the mortgage as may be requested by the Government.

(4) Interest shall be computed at the rate prescribed in the offer. Accrued interest shall be paid with each principal installment.

g. The offeror shall on a mutually agreeable date not later than 90 days after acceptance of the offer, or such longer period as may be agreed upon in writing, tender to the Government the balance of the purchase price (if a cash sale), or (if a credit sale) the offeror shall pay the balance of the down payment, and shall execute and deliver to the Government the instruments described in f(3), above, and furnish evidence of insurance coverage. Upon such tender being made by the offeror, the Government shall deliver to the offeror the instrument, or instruments, of conveyance. In any event, if possession was assumed by the offeror prior to the date of conveyance, the offeror shall pay, in addition to the purchase money due, an amount required under the provisions of the offer.

h. The offeror shall pay all taxes imposed on this transaction and shall obtain at his own expense and affix to all instruments of conveyance and security documents such revenue and documentary stamps as may be required by Federal and local law. All instruments of conveyance and security documents shall be placed on record in the manner prescribed by local recording statutes at the offeror's expense.

9. OFFICIALS NOT TO BENEFIT.

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of the contract of sale or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the contract of sale if made with a corporation for its general benefit.

10. TITLE

Conveyance of the property will be accomplished by a good and sufficient deed, without warranty, express or implied.

11. CLOSING

Sale closing will be held in the Office of Regional Counsel, General Services Administration, Region 1, Boston, Massachusetts.

12. DELETIONS

Paragraphs 6a and 8e have been deleted in their entirety.

13. If this Offer to Purchase is accepted by the seller and:

- a. seller fails for any reason to perform its obligations as set forth herein; or
- b. title does not transfer or vest in the purchaser for any reason although purchaser is ready, willing, and able to close, seller shall promptly refund to purchaser all amounts of money purchaser has paid without interest whereupon seller shall have no further liability to purchaser.

NON-DISCRIMINATION COVENANT

(To be included in instrument of conveyance)

The Grantee covenants for itself, its heirs, successors, and assigns and every successor in interest to the property hereby conveyed, or any part thereof, that the said Grantee and such heirs, successors, and assigns shall not discriminate upon the basis of race, color, religion, sex, or national origin in the use, occupancy, sale, or lease of the property, or in their employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

EXCESS PROFITS CLAUSE

This covenant shall run with the land for a period of 5 years from the date of conveyance.

With respect to the property described in this deed, if any time within a 5-year period from the date of transfer of title by the Grantor, the Grantee or its successors or assigns shall sell, lease or enter into agreements to sell or lease the property, either as a single transaction or in a series of transactions, it is covenanted and agreed that all proceeds received or to be received in excess of the Grantee's or a subsequent seller's actual allowable costs will be remitted to the Grantor. In the event of a sale or lease of less than the entire property, actual allowable costs will be apportioned to the property based on a fair and reasonable determination by the Grantor.

For purposes of this covenant, the Grantee's or a subsequent seller's deductible costs shall include the purchase price of acquiring this real property, the financing costs associated with the acquisition, and the direct costs actually incurred and paid for physical improvements on the subject property for the following:

(1) Improvements on the property which serve only that property, including road construction, storm and sanitary sewer construction, other public facilities or utility construction, building rehabilitation and demolition, landscaping, grading and other site or public improvements; and

(2) Design and engineering services with respect to the improvements described in (1) above, provided, however, that none of these costs will be deductible if defrayed by Federal grants or if used as matching funds to secure Federal grants. In order to verify compliance with the terms and conditions of this covenant, the grantee, or its successors or assigns, shall submit an annual report for each of the subsequent 5 years to the Grantor on the anniversary date of this deed. Each report will identify the property involved in the transaction, indicate the rental for any property leased, the sale price of any property resold, the purchaser and the proposed land use, and enumerate any allowable costs incurred for physical improvements on the property that would offset any profit realized. If no lease or resale has been made, the report shall so state. Failure to file timely reports will extend the operation of the covenant for an additional 1-year period for each late or omitted report. The Grantor may monitor the property involved and inspect records related thereto to ensure compliance with the terms and conditions of this covenant and may take any actions which it deems reasonable and prudent to recover any excess profits realized through the resale or lease of the property.

FAA RESTRICTIONS

Based on coordination between the General Services Administration and the Federal Aviation Administration (FAA) as recommended in House Report Number 95-1053, entitled "FAA Determination of 'No Hazard' for Structures Near Airports", it has been determined that the only public airport within 6 nautical air miles of this property is the Logan International Airport. FAA has been apprised of the proposed disposal of the property, and that the Government's conveyance document will contain a provision that the grantee, its successors and assigns and every successor in interest to the property herein described, or any part thereof, must prohibit any construction or alteration on the property unless a determination of no hazard to air navigation is issued by FAA in accordance with 14 CFR Part 77, "Objects Affecting Navigable Airspace", or under the authority of the Federal Aviation Act of 1958, as amended.

